IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8141 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANSINH RAYSINH BARIYA

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Godhra, passed an order on August 13, 1999, in exercising of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration three offences registered against the detenu under Bombay Prohibition Act, so also statements of four anonymous witnesses recorded by the Police Inspector, LCB, Godhra, while passing the order of detention. The detaining authority recorded a subjective satisfaction about correctness and genuineness of the incidents stated by these witnesses and fear expressed by them qua the petitioner and decided to exercise powers under Section 9(2) of the PASA Act by maintaining anonymity of these witnesses. The detaining authority, after considering the possibility of resorting to less drastic remedies, came to a conclusion that powers under PASA Act are required to be exercised in order to immediately prevent the petitioner from pursuing his illegal and anti-social activities.

3. The petitioner/detenu challenges the order of detention on various counts by preferring this petition under Article 226 of the Constitution. Ms. Kachhavah, however, restricted her arguments to the aspect of improper exercise of powers under Section 9(2) of the PASA Act, resulting into infringement of right of the detenu of making an affective representation contemplated under Article 22(5) of the Constitution. In order to substantiate her arguments, Ms. Kachhavah has drawn attention of this Court to the grounds of detention, wherein the detaining authority has observed that statements are recorded by P.I., LCB, Godhra, which have been verified by Dy.S.P., Godhra and Sub-Divisional Magistrate, Godhra, with which the detaining authority agrees. Later on, the authority observed that it is satisfied about the fear of the witnesses being genuine. Ms. Kachhavah submitted that, if the statements are perused, they indicate that the statements have been verified by Dy.S.P. and the Sub-Divisional Magistrate and not the detaining authority. The subjective satisfaction recorded by the detaining authority, therefore, cannot be said to be genuine. She submitted that the verification by the Sub-Divisional Magistrate and Dy.S.P. was not at the behest of the detaining authority and it, therefore, cannot be said that the powers were exercised by the detaining authority through these officers. She, therefore, submitted that this is improper exercise of powers under Section 9(2) of the PASA Act, which would vitiate the detention and, therefore, petition may be allowed by quashing the order of detention.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him,

the detaining authority has perused the statements and other material produced before him by the sponsoring authority and has recorded subjective satisfaction and, as such, it cannot be said to be an improper exercise of powers under Section 9(2) of the PASA Act and the petition may, therefore, be dismissed.

5. Considering rival side contentions, an undisputed fact that emerges from the papers is that there is no personal verification carried out by the detaining authority in respect of the anonymous witnesses, their statements regarding the incidents narrated by them and the fear expressed by them. The language employed by the detaining authority in the grounds of detention and the tenor thereof is considered, it indicates that the statements recorded by the Police Inspector, LCB and verified by Dy.S.P., Godhra and Sub-Divisional Magistrate, Godhra were placed before the detaining authority and they were accepted by the detaining authority. There appears not any separate report either forms the Dy.S.P. or from the Sub-Divisional Magistrate to the detaining authority. If the verification by these officers are seen, they reflect only reiteration of the principal statements regarding the incidents and the fear expressed by the witnesses. It is, therefore, not possible for this Court to reconcile as to how the detaining authority has recorded a satisfaction about the genuineness of the fear expressed by the witnesses qua the petitioner in respect of their person and property. No affidavit in reply is filed by either the detaining authority or the Dy.S.P. or the Sub-Divisional Magistrate.

5.1 Thus, it is clear that the detaining authority has himself not verified the statements to ascertain the genuineness of the fear expressed by the witnesses nor has the detaining authority got these statements verified through Dy.S.P. or Sub-Divisional Magistrate, but has only accepted the statements produced before him by the sponsoring authority. Thus, there is total absence of "subjective satisfaction", which is, of course, verbally expressed in the grounds of detention. In this situation, the exercise of powers under Section 9(2) of the PASA Act cannot be considered as proper. Improper exercise of powers under Section 9(2) of the PASA Act of claiming privilege by the detaining authority has a direct bearing on the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution and, therefore, the order of detention and continued detention would stand vitiated. The petition deserves to be allowed on this ground alone.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 13, 1999 is hereby quashed. The detenu-Laxmansinh Raysinh Bariya is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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